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BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Further Improvements Are Needed In Amtrak's Passenger Service Contracts, But They Won't Come Easily

Amtrak has made significant improvements in its contracts with other railroads for services that are essential for operating Amtrak trains. Further revisions in contract provisions are needed to provide better incentives for the railroads to operate the trains on time and to hold the line on costs.

The railroads have generally not agreed to Amtrak's proposals for changing the contracts and Amtrak has limited options in this situation. The legally prescribed process for resolving such disputes--taking them to the Interstate Commerce Commission--has not been used frequently. Amtrak should use this process more to see if it works satisfactorily. If it doesn't, Amtrak should seek congressional guidance and action.

Amtrak's standardized payments for certain services have been inequitable in some cases and Amtrak needs to change its policy for revising these payments.

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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To the President of the Senate and the
Speaker of the House of Representatives

This is our fifth report under the requirement in the 1974 amendments to the Rail Passenger Service Act (Public Law 93-496) that we conduct annual performance or management efficiency type audits of Amtrak's activities and transactions. This report covers Amtrak's policies for developing contracts with other railroads for services Amtrak needs to operate passenger trains.

We are sending copies of the report to the Director, Office of Management and Budget; the President of Amtrak; the Secretary of Transportation; the Chairman, Interstate Commerce Commission; and other interested parties.

Comptroller General
of the United States

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COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

FURTHER IMPROVEMENTS ARE NEEDED IN AMTRAK'S PASSENGER SERVICE CONTRACTS, BUT THEY WON'T COME EASILY

D I G E S T

Even though Amtrak has now taken over direct operation of many of its functions, it still must obtain many services from other railroads. The railroads provide train and engine crews for all Amtrak trains, provide and maintain tracks, do routine inspection and servicing of equipment, and provide other services and facilities. The railroads charged Amtrak $305 million in fiscal year 1980, accounting for over one-fourth of Amtrak's operating expenses and 70 percent of its operating income. (See p. 2.)

The operating railroads are Amtrak's sole source for most of the services, and negotiating better service provisions into the contracts is not easy. Provisions for incentives to the railroads to improve service and restrain c sts are particularly important to Amtrak's success, but are also difficult to negotiate. Amtrak has devoted considerable efforts to such negotiations and has made progress in improving the contract provisions. Additional improvements are needed, but it does not seem that the railroads will readily agree to the changes.

CONTRACT PROVISIONS NEED FURTHER REVISION

Amtrak's original passenger service contracts with the railroads provided for reimbursing the railroads' costs and did not contain incentive provisions to minimize costs or improve railroads' performance. They also did not contain clear descriptions and definitions of the services the railroads were to provide. In addition, the original agreements did not provide a means for correcting deteriorating service. The compensation provisions of the original contracts could be renegotiated and

amended anytime after July 1, 1973, but five railroads continue to operate under these agreements. (See p. 4.)

A June 1977 GAO report pointed out that the first major group of amendments to most of the original agreements, undertaken in 1974, had serious shortcomings, such as questionable incentive provisions and unrealistic fixed prices. Although costly to Amtrak, these amendments resulted in little real improvements in on-time performance or maintenance. (See p. 7.)

The second major group of amendments starting in 1976 require more realistic improvements in train performance before incentive bonuses are paid. They also need revision however, in the areas of incentives for meeting intermediate point schedules, more effective penalties for poor performance, and fixed payments (called flat rates) for certain services. (See p. 8.)

Under the second amendment agreements, flat rates stay in effect for the life of the contract and are adjusted only for inflation and changes in the service provided. Because errors are sometimes made in setting flat rates, GAO believes that a mechanism is needed for changing the rates during the contract period under certain conditions. (See p. 10.)

OBSTACLES TO NEGOTIATING UPDATED AGREEMENTS

Amtrak has second amendment agreements with 14 railroads, but continues to operate under the original agreements with 5 railroads. Amtrak has noted the shortcomings of the original agreements, but believes it can operate satisfactorily under them and is not willing to change them if the cost is too high. Some of the railroads have not found the incentive provisions of the amended agreements attractive, apparently because they would have difficulty in meeting the performance standards necessary to earn the incentive bonuses. (See p. 15.)

Despite substantial efforts, Amtrak has not been able to obtain railroad consent on revisions to second amendment agreements to better encourage on-time performance, including arrivals at intermediate points. Many railroads believe that they are held accountable for delays that are beyond their control, such as Amtrak equipment failures, and do not want to accept additional risks unless they are well compensated. Amtrak believes that its proposed contract provisions are appropriate and continues to push for their adoption. (See p. 22.)

In addition to its efforts to negotiate better provisions into its contracts, Amtrak has sought relief in a few instances by going to court and to the Interstate Commerce Commission (ICC) to settle disputes with the railroads. It has also proposed and/or supported legislation to strengthen its position in dealing with the railroads. Legislation that would have required incentives for meeting intermediate point schedules and penalties for poor on-time performance has been considered by the Congress, but not adopted. (See pp. 25 to 28.)

GAO believes that Amtrak should have given the legislatively established process of taking disputes to ICC more of an opportunity to work before seeking additional legislative remedies.

In August 1980, an Amtrak consultant--Reebie Associates--made recommendations for devising more effective contract relationships with the railroads providing passenger services. A number of the consultant's findings give further support to GAO's conclusions. Amtrak officials have some misgivings about the consultant's report, but assured GAO that they will consider the report thoroughly and use it to try to make improvements in passenger service contracts. (See p. 28.) The report seems to provide additional alternatives for Amtrak to consider in trying to improve its contracts, including

long-term actions such as the possibility of introducing competition into its present sole-source arrangement with each of the railroads. (See p. 30.)

RECOMMENDATIONS TO THE PRESIDENT OF AMTRAK

Amtrak should try to improve its passenger service contracts by revising its policy regarding flat rates to provide a mechanism for changing them during a contract period under certain circumstances. (See p. 14.) In addition, Amtrak should try resolving some of its current disputes with railroads by going to the ICC for arbitration. (See p. 32.)

If taking additional cases to ICC for resolution proves unsuccessful Amtrak should seek congressional guidance and action regarding its dealings with other railroads. (See p. 32.)

COMMENTS FROM INTERESTED PARTIES

Amtrak and the Department of Transportation generally did not agree with GAO. Amtrak said that differences between flat rates and the railroads' costs of providing the services are acceptable as long as the aggregate payments are reasonable, and that a mechanism for changing them is not needed. GAO believes that it is not practicable to determine, with certainty, whether the aggregate payments are reasonable and that each flat rate should be established as closely as possible to the railroad's incremental costs. (See p. 13.)

Amtrak said that it cannot determine that the cost and effort of taking cases to the ICC would be justified by the results and that ICC could require higher payments to the railroads than Amtrak believes are reasonable. GAO believes that this lack of experience and knowledge regarding ICC's resolution of disputes with operating railroads is exactly the reason Amtrak should take additional cases before the ICC. (See p. 30.)

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ABBREVIATIONS

Amtrak	National Railroad Passenger Corporation
AT&SF	Atchison, Topeka and Santa Fe Railway Company
Conrail	Consolidated Rail Corporation
DOT	Department of Transportation
GAO	General Accounting Office
ICC	Interstate Commerce Commission
ICG	Illinois Central Gulf Railroad

CHAPTER 1

INTRODUCTION

The National Railroad Passenger Corporation (Amtrak) became responsible in 1971 under the Rail Passenger Service Act (Public Law 91-518) for managing and developing the Nation's intercity rail passenger services. Since then it has required increasing amounts of taxpayer assistance for its day-to-day operations and for investments in improved facilities and equipment. Its operating revenues grew from $153 million in fiscal year 1972 to $436 million in fiscal year 1980, but during the same period its operating expenses increased from $306 million to over $1.1 billion. Federal grants for Amtrak's operating losses total more than $3.3 billion through fiscal year 1980. In addition, the Government has guaranteed loans of $900 million and provided grants of about $686 million to Amtrak through fiscal year 1980 for capital improvements, primarily new passenger cars and locomotives.

The Congress amended the Rail Passenger Service Act in 1974 (Public Law 93-496), making it mandatory for the General Accounting Office to conduct annual performance or management efficiency type audits of Amtrak's activities and transactions. All of our previous reports on Amtrak are listed in appendix I.

Our second report on Amtrak under the 1974 legislation was entitled "Amtrak's Incentive Contracts With Railroads--Considerable Cost, Few Benefits" (CED-77-67, June 8, 1977). That report highlighted Amtrak's efforts from 1971 through early 1977 to develop and improve its contractual relationship with other railroads operating Amtrak's trains. The report discussed deficiencies in some of the earlier contracts, and complimented Amtrak's management for many of the improvements in updated agreements with the railroads.

This report--our fifth under the legislative requirement--takes another look at Amtrak's contractual relationship with the railroads providing facilities and services necessary for Amtrak's operation. It discusses some of the continuing problems Amtrak faces in further developing mutually beneficial arrangements with the railroads and describes Amtrak's efforts to obtain improved performance arrangements in the contracts.

WHY AMTRAK USES PASSENGER SERVICE CONTRACTS WITH OTHER RAILROADS

When Amtrak assumed responsibility for most of the Nation's intercity passenger trains on May 1, 1971, it had no equipment or facilities of its own, and virtually no employees. Therefore, it had to contract with private railroad companies to have them continue operating the trains and provide all the necessary support services and facilities. At least for a while, the railroads were to operate Amtrak trains much as they had before Amtrak took over. The only difference was that Amtrak paid for their equipment, services, and facilities, and to some degree directed their train operations.

Gradually, however, Amtrak purchased the equipment and assumed direct control over most of the employees and functions associated with its trains. It instituted its own nationwide reservation and ticketing system, developed the capability to operate most of the stations and repair and maintain most of the equipment, and took over all of the onboard service functions. Finally, it became a full-fledged operating railroad in 1976 by becoming the owner of the Northeast Corridor rail system.

Even though Amtrak has taken over many of its own operating functions, it must still rely on other railroad companies to a great extent. Except in the Northeast Corridor, which Amtrak now owns, the railroads own and maintain the tracks and other right-of-way facilities Amtrak uses. In addition, the railroads control actual train operations and dispatching, provide operating crews, and routinely inspect and service many of the trains en route.

The railroads providing their services and facilities charged Amtrak $305 million in fiscal year 1980. These charges were over one-fourth of Amtrak's total operating expenses and absorbed 70 percent of its operating income. The railroad services and their costs are governed primarily by passenger service contracts Amtrak negotiates with each performing railroad.

At least some use of contract services and facilities provided by other railroads is essential to Amtrak's efforts to provide modern and efficient rail passenger services. Amtrak could not afford the capital investments that would be needed to establish its own rights-of-way and facilities for so few trains in so many places, and it would probably have serious labor problems and higher costs in some locations if it attempted to provide all of its own services.

Amtrak, we believe, simply could not afford to operate many of its routes if the railroads did not provide their services and facilities.

OBJECTIVE, SCOPE, AND METHODOLOGY

Our primary objective in this review was to evaluate Amtrak's contracts with other railroads for services and facilities and how it manages the contracting process. We tried to identify steps Amtrak could take to make its contracts more effective in improving service to the public and in restraining costs.

We reviewed files of correspondence and internal papers on contract negotiation, administration, and audit for a number of agreements. We interviewed Amtrak officials and employees at their Washington headquarters and at selected field locations concerning the contracts' services, costs, and internal control matters. We also visited four railroad companies to interview officials, examine records, or observe certain accounting and control functions. We rode several Amtrak passenger trains to observe first-hand some of the services provided by the contracting railroads.

We did not make detailed examinations of railroad cost records to determine the validity of railroad charges to Amtrak. Amtrak's Contract Audit Department makes such detailed examinations and we relied extensively on their audits of railroad costs.

We obtained comments on the matters discussed in the report from Amtrak and the Department of Transportation (DOT). The Interstate Commerce Commission (ICC) refrained from commenting because of its continuing authority to arbitrate compensation disputes between Amtrak and the railroads. We also obtained comments on appropriate parts of our report from the Delaware and Hudson Railway Company, the Atchison, Topeka and Santa Fe Railway Company, and the Chessie System. The comments received are included as appendixes II through VII.

CHAPTER 2

THE CONTRACTS WITH OTHER RAILROADS NEED FURTHER IMPROVEMENTS

Amtrak and most of the railroads performing passenger services for Amtrak have made two major groups of amendments to their contracts, resulting in improved provisions for equitable payments to the railroads for the services they provide, as well as incentives for adherence to reasonable schedules essential for encouraging travelers to use Amtrak trains. The original agreements negotiated in 1971--still in effect for five railroads--are basically cost-plus contracts without effective provisions to encourage quality performance or cost control. Additional improvements are also needed in the amended agreements, however, to provide better incentives for the railroads to operate trains on time and to hold the line on their, and Amtrak's, costs.

THE ORIGINAL AGREEMENTS STILL IN EFFECT HAVE SERIOUS WEAKNESSES

The original agreements negotiated by Amtrak and the railroads in 1971 provided for payments to be based on the railroads' costs. The contracts did not provide incentives for the railroads to improve service or hold down costs.

The original agreements provided for the railroads to furnish all labor, materials, equipment, and facilities necessary to perform Amtrak's passenger services in an economic and efficient manner. Amtrak was to reimburse them for expenses incurred that were related solely to passenger service, plus a percentage of these expenses to cover certain other costs related to both passenger and freight services. Thirteen railroads started operating the network of Amtrak trains under the original agreement on May 1, 1971.

In negotiating these original agreements, the railroads wanted Amtrak reimbursement for all of their direct costs of passenger services and facilities plus an array of other payments for indirect costs, management fees, return on investment, and profit. Since Amtrak was taking over substantial passenger losses from the railroads, it believed the Congress intended for it to pay no more than the direct operating costs of the trains the railroads would be running, and not pay the railroads a profit.

Accordingly, Amtrak negotiated contracts requiring payments only for railroad expenses incurred solely for the benefit of passenger services plus payments for certain costs

common to freight and passenger service determined to be avoidable for the railroads if passenger services were not provided. Determining exactly which of these common costs were incremental 1/ because of passenger services was a difficult task so, as a temporary measure, Amtrak agreed to pay the railroads a 5-percent additional fee to cover these costs. The agreement provided that the compensation provisions could be renegotiated and amended any time after July 1, 1973.

Amtrak eventually concluded that the original type of agreement with the railroads was faulty because it encouraged inefficient operations by the railroads and did nothing to induce them to provide quality service. Amtrak's description of the original agreement, provided in a proceeding before ICC in July 1976, is quoted below.

> "Under the terms of the Basic [original] Agreement, there were no controls to insure nor incentives to induce the railroads to provide quality service. The very nature of the cost-plus contract, in fact, encouraged inefficient operation by the railroads. The on-time performance of most Amtrak passenger trains operated by the railroads deteriorated during the first three years of operation under the agreement while operating costs soared well over those which could be attributed to inflation. During this period, Amtrak could not effectively institute cost or budget control measures. The bills submitted by the railroads, although conforming to the ICC code of accounts, could not reasonably be interpreted to determine how many hours were being charged at various locations to Amtrak for service. The missing element needed by Amtrak operating personnel to effectively administer cost savings programs and to affect budgeting measures was the functional definition of the services Amtrak was purchasing. Meanwhile, a team of auditors was kept busy full time determining whether the railroads were billing Amtrak properly, that is, whether or not the charges submitted by them for services or material were solely related costs or were properly allocated costs. These trained accountants understood the billing accounts and

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1/Incremental costs, as applicable to Amtrak, refer to the additional costs which the railroads incur solely because they have to operate Amtrak trains over their lines.

procedures but were in no position to determine whether or not the amount of labor and/or material charged for a particular job was appropriate."

Amtrak also noted that the original agreement did not provide a means for correcting the deteriorating service, and that lengthy and costly arbitration was not a satisfactory means of obtaining the positive effort it needed from the railroads. An illustration of the original agreement and its weaknesses follows.

The Illinois Central Gulf Railroad

Amtrak still operates with the Illinois Central Gulf Railroad (ICG) under the original 1971 agreement. There is no assurance that either party is receiving fair and equitable treatment under the contract because

--the contract does not adequately define what services should be rendered, resulting in poor contract administration and

--the railroad's accounting system lacks sufficient controls to insure the costs are stated accurately.

The original operating agreement with ICG was intended to be an interim agreement, and as such, lacked a detailed statement of the services to be provided. The result is that Amtrak lacks adequate control over ICG's expenditures and determines the necessity and validity of railroad services mainly through the post-audit process.

Many of ICG's costs disallowed by Amtrak audits result from the lack of an agreement on what services are considered necessary. The railroad requested that Amtrak specify what services it wanted performed, but Amtrak has not done so because an amended agreement has not been worked out. According to a railroad official, if operations continue under the original agreement it would be helpful if Amtrak specified what it wanted done at each location. He saw no reason why the list of services could not be incorporated into the original agreement.

Amtrak believes that the post-audit system of controlling costs under the original agreement is detrimental because all costs that are billed are reimbursed, subject to audit. Disallowed costs are not collected or offset until significantly later, after the bills have been audited, and Amtrak loses the use of these funds in the interim.

Although ICG is required to maintain a separate set of accounts to record Amtrak revenues and expenses, its accounting system and procedures lack sufficient controls to assure the costs reported to Amtrak are accurate and properly identified. For example, according to Amtrak's contract auditors, it was impossible to determine whether certain charges were excessive or whether certain work for Amtrak was actually completed due to a lack of proper communications between ICG's home office and its field personnel. Such inadequate controls have contributed to the railroad's over and under billing to Amtrak, an inequitable situation. We discussed the problems with ICG's Director of Amtrak Operations and several of its key budgeting and accounting personnel. They acknowledged the lack of adequate controls but some questioned whether the benefits of revising the accounting for Amtrak costs would outweigh the costs of doing so. The railroad officials believe this question needs further study before any action is taken.

Neither the ICG's internal audit staff nor the employees preparing the monthly billing verify the validity of the Amtrak charges in detail. According to an ICG employee, this prevents the railroad from catching all but the most obvious invalid charges to Amtrak. This lack of detailed verification is a two-edged sword. Just as the railroad cannot assure that all reported Amtrak charges are valid, it has no assurance that it is billing Amtrak for all appropriate costs.

Both Amtrak and the railroad recognize that continued operations under the original agreement is not the best situation, but attempts to negotiate an amended agreement have not been successful. Amtrak continues to interpret the contract through its audits, while the railroad lacks the necessary controls to insure that Amtrak is getting what it is paying for.

Amtrak's efforts to negotiate new contracts with the railroads and the results of those efforts are discussed in chapter 3.

AMENDED AGREEMENTS ALSO NEED FURTHER IMPROVEMENTS

Our June 1977 report (CED-77-67, June 8, 1977) showed that the agreements first negotiated to replace the reimbursement provisions of the original operating agreements also had serious problems. These agreements beginning in mid-1974--called first amendment agreements--resulted in substantial Amtrak incentive payments to the railroads for supposedly improved on-time performance of trains and better maintenance, but improvements in these areas were illusory.

The first amendment agreements also provided standardized prices--called flat rates--for certain services, but many of these flat rates frequently exceeded the railroads' incremental costs of providing the services. Amtrak generally agreed with most of our observations and recommendations in the June 1977 report. At that time it was negotiating new agreements with the railroads and trying to structure more realistic service and compensation arrangements.

The new service and compensation arrangements negotiated--called second amendment agreements--that superceded the first amendment agreements beginning in late 1976 incorporated substantial schedule improvements and were designed by Amtrak to require more genuine performance improvements before incentive bonus payments are made. The second amendment agreements, many of which are now subject to renegotiation, continue to have weaknesses, however, in the areas of incentives for meeting intermediate point schedules, more effective penalties for poor performance, and flat rates.

Despite the improved incentive provisions already developed with most railroads, the situation noted in our June 1977 report of not having trains operate closer to schedules in many cases has continued. Amtrak's systemwide on-time performance declined steadily from an average of 76 percent in 1975 to a low of 58 percent in 1979, which Amtrak characterized as completely unacceptable and even deplorable. A March 14, 1980, ICC report stated that Amtrak passengers complain more about poor on-time performance than any other single type of service failure.

Amtrak's overall on-time performance has picked up considerably in 1980 compared to 1979. Nevertheless, in a press release regarding overall on-time performance of 63.7 percent in July 1980, Amtrak noted that four railroads provided on-time performance levels better than 85 percent, but that nine railroads provided levels less than 70 percent. Amtrak attributed the overall improvement in early 1980 to

--more realistic northeast corridor schedules,

--a relatively mild winter,

--introduction of new or rebuilt equipment on two long-distance routes in cold climates, and

--continued improvement in equipment reliability.

Need for incentives to meet good intermediate point schedules

Amtrak's second amendment agreements with most railroads provide for incentive payments for performance which exceeds 80 percent on-time at end points. A problem arises, however, when trains arrive on time reliably at their end points and earn generous incentives for the railroads, but are routinely late at certain intermediate points. As noted in our 1977 report, this happens because the trains have excessive recovery time built into their schedules to ensure on-time performance at the end point.

Amtrak considers this deficiency of the second amendment agreements to be especially significant since more than 80 percent of its passengers board or disembark at such intermediate stations. Moreover, a train's passenger inventory may turn over three or four times at intermediate stations while en route. Amtrak views this as a continuing problem needing improvement as railroad contracts are renegotiated.

As discussed further in chapter 3, negotiating contracts containing intermediate point on-time performance measurements has been difficult and, so far, unsuccessful.

Need for more effective penalties to be assessed for poor on-time performance

Another of Amtrak's problems in attempting to provide faster and more reliable train service is its limited ability to impose effective penalties for poor performance by operating railroads. Effective during and after 1977, all second amendment agreements contained penalty provisions for poor performance--generally below 70 percent on-time measured at end point destinations. However, the penalties only apply against incentive bonuses earned during the preceding 12 months.

Amtrak has determined that a more effective and fair penalty arrangement would provide for penalties to be assessed for poor on-time performance without being limited to the amount of incentives which the operating railroad may have earned. Amtrak has said that such a penalty arrangement would be a logical, business-like complement to a railroad's opportunity to earn generous incentives for operating trains reliably. As discussed further in chapter 3, however, the railroads have resisted any penalty arrangement which would exceed the incentive previously earned and prevent them from recovering all of their incremental costs.

Amtrak needs more effective flat rates

In an effort to provide the operating railroads with better incentives to hold down costs and to simplify payments, Amtrak has identified in its amended agreements most of the services and facilities actually provided by the railroads and has established fixed payments for the services and facilities. These fixed payments are called flat rates. The flat-rate amounts agreed upon usually remain in effect for the term of the contracts--currently 2 to 5 years--and are subject to adjustment for inflation and general wage increases. The rates can also be adjusted when a railroad ceases or fails to commence a service or when the service changes in accordance with the agreement.

Using flat rates can provide substantial benefits to both Amtrak and the railroads but, if they are not properly developed and managed, it can result in serious inequities. There are strong indications that such inequities exist.

According to Amtrak, flat rates decrease the amount of auditing required, enhance cost and budget management, and produce substantial administrative benefits. Amtrak also believes that flat rates provide a strong incentive to railroads to control and reduce their costs, since any difference between a railroad's actual costs and the negotiated flat rates represents an opportunity for the railroad to earn a profit. Amtrak thinks it benefits in this situation because new flat rates would be negotiated in the future which incorporate the reduced costs.

Amtrak agrees that flat rates can be risky if they are not fully researched and strenously negotiated, since they establish the agreed upon rates for particular services for specified minimum periods of time. Amtrak states, however, that it believes flat rates have worked effectively in keeping its total costs for its dealings with railroads to a minimum.

Flat-rate amounts in the amended agreements are supposed to approximate railroad costs as closely as practicable. For example, if Amtrak agrees to pay a flat rate of $1,000 each month to a railroad for a specific service, and the railroad's actual costs for the service average about $1,000, then there is no problem. However, if the railroad consistently spends less than $1,000 for performing the service, it benefits financially from Amtrak's flat-rate payment. Conversely, if the railroad consistently spends more than $1,000 for the service, then Amtrak benefits. Of course, the amount of

financial benefit to either party depends on how much an established flat rate deviates from the railroad's actual costs. In any case where the flat rate is initially set too high or is not reduced whenever service reductions occur, the financial loss to Amtrak can be substantial.

If flat rates were established accurately in every case, the railroads would have an opportunity to earn a profit by finding ways to provide the services at lower costs and Amtrak would benefit by the streamlined payment procedures and the lower flat rates that would result when the agreements were renegotiated on the basis of the new, lower costs. The railroads would also have an incentive to restrain costs because allowing their costs to rise above the flat rate amounts would result in losses. As shown in the following examples, however, flat rates are not always established accurately.

--Amtrak's auditors noted in a November 1979 report that an incorrect flat rate caused Amtrak to pay one railroad an average of $1,900 per month, or more than $46,000 over a 2-year period, in excess of the railroad's incremental costs for train and engine crews. This occurred because in establishing the flat rate for train and engine crew services for a proposed second amendment agreement with the Delaware and Hudson Railway Company, Amtrak accepted only 1 month's cost data as the basis for establishing the flat-rate amount. The sample month contained a significantly higher level of costs than other months, and, therefore, using the single abnormally high month resulted in a flat rate higher than the average level of actual railroad costs. The proposed agreement was not signed, but was used as an interim agreement during 1977 and 1978.

The incorrect flat rate has been adjusted upward for inflation and was included in a new second amendment agreement which became effective January 1, 1979. Data available in Amtrak's files indicate that some excessive payment has continued under the new agreement. Since the excessive payments resulted from simply having a flat rate that was initially set too high, no collection or offset is possible under Amtrak's procedures which permit the railroad to keep the excessive payment as a profit.

--Beginning February 1, 1977, under its second amendment agreement with the Seaboard Coast Line Railroad Company, Amtrak paid a flat rate of $25,000 per month

for certain taxes on stations. The amount was established based on railroad work papers and other representations regarding the taxes on the stations involved. In 1980, Amtrak auditors found indications that these payments were grossly excessive, but the railroad denied the auditors the records needed to determine whether overpayments had been made and the amount involved.

Despite Amtrak efforts to set flat rates at amounts close to the railroads' incremental costs of providing the services, significant differences can and do occur. If such differences result from railroad efforts to provide the same services for lower costs, the railroad should be entitled to keep the difference accruing until the contract is renegotiated as a reward for its cost-cutting efforts. But in cases where flat rates substantially exceed costs because the rates were initially set too high, it does not seem equitable for the railroads to be able to keep such rewards. This is especially true because Amtrak must rely on negotiation rather than competition to establish prices and must use cost information supplied by the railroads in its negotiations. Conceivably, other situations could occur in which Amtrak would improperly overpay railroads for flat-rated services.

Because of the possibility of additional inequitable payments to railroads for flat-rated services, we believe that Amtrak should try to negotiate contracts containing provisions for changing flat rates during a contract period under certain circumstances instead of waiting until the contract is renegotiated. The circumstances under which the rates could be changed would have to be specified, but they would include situations where the rate was established incorrectly.

In commenting on this matter (see app. II), Amtrak said that the amounts involved in the examples were not significant compared with the total amount paid under passenger service contracts with operating railroads. Amtrak noted, however, that there are probably other instances in which overpayments have occurred.

We did not select a scientific random sample of flat rates, so we cannot determine the magnitude of overpayments or underpayments. We believe, however, that a systemic problem exists inasmuch as no mechanism has been provided for changing a flat rate during the life of a contract even if the rate was clearly erroneous to begin with. Based on Amtrak's internal audit reports, we believe that the problem is significant enough that Amtrak should take corrective action.

As indicated in the previous examples, Amtrak must still audit the railroads' costs when flat rates are used to determine if the rates are initially established correctly and if they need to be changed when the contract is renegotiated. In some cases, audits also show whether the contracted service is actually provided. There have been some cases where railroads did not provide the Amtrak auditors with the records they needed to perform audits of flat rates. Amtrak's policy is now to include wording in the contracts that provides its auditors with added authority to conduct audits. It is important that this policy be continued and vigorously enforced so that Amtrak can make informed judgments on flat-rate matters.

CONCLUSIONS

Amtrak has made substantial improvements in most of its passenger service contracts since the original agreements were signed in 1971. The five original agreements still in effect have the same inherent weaknesses as the other original agreements that have been replaced.

Although the second amendment agreements are clearly superior to the agreements preceding them, they too have weaknesses. Amtrak has identified most of these weaknesses and, as discussed in chapter 3, is attempting to correct them. One important area of weakness in the amended agreements that needs additional Amtrak attention, however, is the area of flat rates. The concept of flat rates has merit but, to be effective, the concept must be carefully implemented to avoid inequitable payments.

The only circumstances that should result in a flat-rate payment being substantially different from a railroad's incremental costs of providing the service is when the railroad, (1) through its own initiative and ingenuity, has reduced or restrained its cost of providing the same level of service as called for in its contract with Amtrak or (2) through its own incompetence or mismanagement, allows its costs to increase excessively. If other circumstances lead to a disparity between costs and flat-rate payments, the payment is inequitable and should be changed. If all flat rates were accurately established, changes to them would not be necessary. Since they are not always established accurately, however, some mechanism is needed to provide for changing inequitable rates.

AMTRAK COMMENTS AND OUR EVALUATION

Amtrak disagreed with our suggestion regarding flat rates. It said that it is reasonable to expect that there may be some small overpayment or underpayment in individual items, but that it is more important that the aggregate

payment be reasonable. It also said that the alternative to the stability provided by flat rates is the loose arrangement of the original agreements in which Amtrak paid the railroads' incremental costs.

We do not know that the differences between railroads' costs and flat rates are small in relation to the total amounts involved. More importantly, however, we do not agree with Amtrak's philosophy that overpayments and underpayments on individual flat rates are acceptable as long as the aggregate payment is reasonable. Our primary reason for this belief is that it is not practicable to determine with certainty that aggregate payments are, in fact, reasonable. Rather, flat rates' reasonableness must be evaluated on an item-by-item basis. If Amtrak is concerned only with the aggregate payment, it would seem to have little reason to undertake the effort needed to establish flat rates.

We recognize that it may not be practical to attain accuracy in all flat rates and that some overpayments and underpayments will probably occur. We believe that it should be Amtrak's policy, however, to establish each flat rate as accurately as possible and to immediately revise any flat rate that is shown to be erroneous. Such a policy should recognize that differences between flat rates and railroads' incremental costs do not automatically make flat rates erroneous. As discussed above, if such differences are caused by railroad cost-cutting efforts and the services continue to be provided satisfactorily, the railroad is entitled to the difference as a reward for its efforts.

In addition, we do not agree that the alternative to Amtrak's present flat-rate policy is the cost reimbursement arrangement in the original agreements. As described above, we believe that the use of flat rates should be improved, not discontinued.

RECOMMENDATION TO THE PRESIDENT OF AMTRAK

We recommend that the President of Amtrak attempt to improve passenger service contracts with other railroads by adopting a policy of including provisions in the contracts for changing flat rates during the contract period under specified conditions. Such conditions would include situations where the rates were initially set too high and other situations where substantial differences between incremental costs and flat rates are caused by factors other than railroad mismanagement or cost-cutting efforts.

CHAPTER 3

AMTRAK FACES THE CONTINUING PROBLEM OF NEGOTIATING UPDATED AGREEMENTS

Through continuing negotiating efforts, Amtrak has revised and improved many of its passenger service agreements with performing railroads. In several cases, however, Amtrak and the railroads are still operating under original operating agreements which, as discussed in chapter 2, have serious weaknesses. Most of the amended agreements could also be updated by either party serving a notice of intention to renegotiate. The operating railroads have resisted many of Amtrak's proposed changes, and further improvements in the agreements will not come easily.

AMENDED AGREEMENTS HAVE BEEN NEGOTIATED WITH MOST RAILROADS, AND MANY ARE NOW SUBJECT TO RENEGOTIATION

In our June 1977 report, we said that as of March 1, 1977, Amtrak had negotiated and signed second amendment agreements with the Burlington Northern, Milwaukee Road, and Grand Trunk Western Railroads and had reached tentative agreement with at least five other railroads. Amtrak continued its negotiating efforts with these and other railroads and, as of April 1, 1980, had second amendment-type agreements in effect as shown on page 16.

Performing railroad	Effective date of second amendment agreement	Term of compensation provisions (years) (note a)	Contract costs FY 1979 (actual)	Contract costs FY 1980 (budget)
			---(millions)---	
Boston & Maine	1/ 1/77	2	$ 1.0	$ 0.8
Burlington Northern	9/ 1/76	2	37.4	34.1
Central Vermont	5/ 1/78	5	0.9	1.0
Delaware & Hudson	1/ 1/79	2	1.3	1.0
Grand Trunk Western	12/ 1/76	3	0.6	0.8
Louisville & Nashville (note b)	9/ 1/77	2	3.8	0.1
Missouri Pacific	5/ 1,78	3	5.5	7.9
Milwaukee Road	9/ 1/76	3	8.8	3.8
Richmond, Fredericksburg & Potomac	1/ 1/77	2.25	4.1	2.7
Seaboard Coast Line	2/ 1/77	5	36.8	33.1
Southern Railway	2/ 1/79	3	4.8	6.9
Southern Pacific	7/ 1/77	2.5	19.9	21.6
Union Pacific	1/ 1/78	5	6.9	11.5
Toledo, Peoria & Western (note c)	10/10/79	5	-	-

a/The compensation provisions vary from 2 to 5 years in these agreements, but remain in effect until either party serves notice of intention to renegotiate.

b/Louisville & Nashville operations were discontinued October 1979; budgeted amount is for minor residual service to locomotives.

c/Contract is for service between Chenoa and Peoria, Illinois, in connection with a new service. Amtrak's potential costs will be about $350,000 annually.

As shown above, half of the second amendment agreements are now subject to renegotiation. Amtrak has had limited or no success in attempting to renegotiate these contracts to provide better incentives for on-time performance and low costs, as discussed later in this chapter. (See p. 22.)

AMTRAK HAS NOT BEEN ABLE TO UPDATE ALL THE ORIGINAL OPERATING AGREEMENTS

Despite the serious weaknesses of the original operating agreements, as described by Amtrak to ICC (see p. [illegible]), Amtrak has not been able to negotiate first or second amendment-type agreements with five railroads. These original agreements still cover ill-defined services and costs and are without meaningful provisions to encourage quality service or cost restraint.

Amtrak has noted the shortcomings of the original agreements, but believes it has developed the capability to operate satisfactorily with the five railroads under the original agreements. Amtrak is not willing to change these agreements if the costs of doing so are too high. Some of the railroads have not found the incentive provisions of the amended agreements attractive apparently because they would have difficulty in meeting the performance standards necessary to earn the incentive payments.

Amtrak's efforts to negotiate amended agreements with the remaining five original agreement railroads are described below.

Conrail

Conrail's services over its own lines for Amtrak are still covered by an operating agreement effective April 1, 1976, which was similar to the 1971 original operating agreement Amtrak had with Penn Central, the largest of the railroads comprising Conrail. It was intended to be an interim agreement--covering Conrail's incremental passenger service costs plus 5 percent for other avoidable costs--until Amtrak and Conrail could negotiate an improved service and compensation arrangement. The interim agreement does not define the services Conrail is to provide or limit the costs Conrail can charge to Amtrak. It contains no provisions to encourage or require quality service. Conrail charged Amtrak $33.3 million for services over Conrail lines in fiscal year 1979 and Amtrak budgeted $35.8 million for fiscal year 1980.

One reason that negotiation of a better agreement for services on Conrail lines has been delayed is that Amtrak and Conrail have been attempting to negotiate and resolve various interim agreements covering northeast corridor operations. Amtrak owns, maintains, and controls the Northeast Corridor rail line between Boston and Washington, but Conrail personnel operate Amtrak trains on this line as well

as on Conrail lines. Part of this problem was resolved on on June 19, 1979, when Amtrak and Conrail executed a new support services agreement to replace the interim management agreement which had governed northeast corridor operations since April 1, 1976, when Amtrak became the corridor owner. The new support services agreement was made retroactive to October 1, 1978. It defines Conrail's corridor services for Amtrak and the costs. (The services cost Amtrak $95.4 million in fiscal year 1979 and it has budgeted $90.2 million for fiscal year 1980.) Still to be resolved, however, are disputed costs under the interim management agreement and the difficult problem of agreeing on a fair allocation of corridor costs among the freight and passenger users.

Amtrak and Conrail started preliminary talks in mid-1979 toward negotiating a second amendment-type agreement for off-corridor operations to replace the outmoded original operating agreement. In the talks, Amtrak described its second amendment agreements with other railroads and the incentive and penalty provisions that would apply to Conrail's off-corridor services. Based on its performance record, Conrail knew that it probably would not earn the on-time incentive bonuses, but believed that it could obtain acceptable payment levels without these bonuses. Also, Conrail believed it would be exposing itself to public criticism if it did not attempt to negotiate an agreement at least somewhat consistent with Amtrak's other contracts. Conrail also indicated some desire for a reimbursement arrangement consistent between off-corridor operations--where it owns the lines--and on-corridor operations where Amtrak is the owner.

We understand that Amtrak and Conrail have not made a breakthrough in negotiations of a new off-corridor agreement over the past year. Amtrak's Director of Contract Administration told us as of May 1980, that no effective off-corridor negotiations were being held and none were specifically planned. He also said that both parties were emphasizing resolution of remaining Northeast Corridor cost allocation problems.

The ICG Railroad

The ICG and Amtrak had begun negotiations on an amended agreement and, in 1975, had advanced to the stage where proposals were put forward. However, the parties did not agree on an amended contract. According to ICG's Amtrak Operations Officer, the railroad believed that it would not earn sufficient revenues under the amended agreement to justify the needed effort unless it was able to achieve 90 percent on-time performance. The railroad felt this was unachievable

because it had started a track rehabilitation program which required lower speed operations and the contract held the railroad accountable, in computing ontime performance, for failures of Amtrak-owned locomotives. According to the ICG official, the railroad felt this unfair because Amtrak locomotives were undependable and broke down often.

Although ICG contacted Amtrak in March 1978 about negotiating an amended agreement, neither side is currently pushing the other to begin negotiations. According to ICG's Amtrak Operations Officer, the railroad is not pushing Amtrak for an amended agreement because it feels it cannot reach the desired level of on-time performance until

--it has completed its track rehabilitation programs and

--Amtrak locomotives become more dependable.

Moreover, based on our talks with ICG officials, they still believe the combination of incentives and additional reimbursable items offered by Amtrak would not produce income equivalent to the original agreement until the railroad can achieve 90 percent on-time performance. ICG collected $7.5 million from Amtrak under the original agreement in fiscal year 1979 and Amtrak has budgeted $9.8 million for fiscal year 1980.

Although Amtrak has discussed the possibility of negotiating a new agreement with ICG on several occasions, no progress has been made and Amtrak has no specific plans for further negotiations. Amtrak apparently feels that ICG's demands are more costly than they are willing to pay and they are willing to continue the arrangement of attempting to verify ICG's cost through periodic audits.

Other railroads

Amtrak operations with three other railroads are still governed by original operating agreements. Each railroad's contract costs are shown on page 20.

	Contract costs	
	FY 1979 (actual)	FY 1980 (budget)
	---(millions)---	
Atchison, Topeka, and Santa Fe (AT&SF)	$26.1	$25.2
Baltimore and Ohio	2.8	3.8
Chesapeake and Ohio	4.3	4.6

AT&SF

Both Amtrak and the AT&SF are generally satisfied that the railroad's accounting system fairly identifies Amtrak's passenger service costs, and neither party sees any major reason to begin flat-rate payments in that situation. The AT&SF also has difficulty with the philosophy of Amtrak's incentive plan. It believes the incentives are based on too many important elements over which the railroad has little or no control, such as malfunctioning equipment which the railroad neither owns nor maintains.

Despite the fact that Amtrak and AT&SF are generally willing to continue operating under the original operating agreement, disputes have arisen from time to time. For example, Amtrak's May 1978 audit of AT&SF costs of $69.8 million proposed audit adjustments amounting to $3.5 million. Many of the proposed adjustments related to inadequate documentation of costs and items judged by the auditors to be not solely related to passenger service. An example was costs of almost $632,000 billed to Amtrak from May 1971 through December 1976 for repair and maintenance of certain safety devices (automatic train stop equipment). We understand that Amtrak has withheld amounts from Sante Fe's monthly reimbursements for its adjustment of repair and maintenance charges.

The AT&SF said that the satisfactory working arrangement engendered by the original 1971 agreement seriously challenges the conclusion that (1) the subsequent amended agreements were an improvement and (2) further contract revision is necessary. (See app. VI.) It said that flat rates used in amended agreements lack the necessary flexibility to accurately reflect reimbursable costs, and that the Amtrak--AT&SF arrangement of working out the varying and complex problems of costing as they arise has been, and is, the preferred avenue to equitable and accurate cost reimbursement. It also said that the amended agreements have not substantially improved the on-time performance of Amtrak passenger service on other railroads because either incentives are

an improper device to attempt to improve on-time performance or deficiencies in on-time performance are not the fault of, and are beyond the control of, the operating railroads.

The AT&SF primarily blamed Amtrak failures, rather than the contractual arrangement, for a large portion of passenger train delays. It said the condition of Amtrak's equipment operated on its lines had reached a low ebb, and that breakdowns of locomotives and car equipment are a daily occurrence and have reached the point of impinging on the safety of operations.

The Chessie System (Baltimore and Ohio and Chesapeake and Ohio Railroads)

The Chessie System and Amtrak have tried to negotiate an amendment-type agreement since 1975, but Amtrak's proposals have not been sufficiently remunerative to interest the railroads' management. More recently, differences have emerged regarding the extra costs of track maintenance attributable to Amtrak trains and whether equipment failures should be counted in on-time performance calculations. It seems to us, therefore, that although additional efforts by the parties might bring about an updated agreement, the agreement might be more costly to Amtrak.

The Chessie System commented on its reservations with Amtrak's flat-rate concept and incentive program. (See app. VII.) It also said that it gives the highest priority to operation of Amtrak trains, but that delays are often attributable to Amtrak and are of such a nature that it has little or no direct control over the resulting performance. It said that an incentive program for improvement would show no results in such areas. It said it has viewed Amtrak's negotiations for incentives to carry a significant financial penalty compared with its present level of payment.

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Amtrak also has special operating agreements with Conrail for Northeast Corridor operations (see p. 17), with the Canadian National and Canadian Pacific Railroads for operations extending into Canada, and with the Missouri-Kansas-Texas Railroad for certain track rights and improvements. According to Amtrak, these contracts are classified as special agreements because (1) Amtrak owns the Northeast Corridor, (2) the Rail Passenger Service Act, which provides incremental costs as the basis for Amtrak payments in the United States, does not apply in Canada, and (3) the Missouri-Kansas-Texas agreement involves only use of track, not

operating services. Amtrak's costs for the special agreement railroads are shown below.

	Contract costs	
	FY 1979 (actual)	FY 1980 (budget)
	---(millions)---	
Conrail (Northeast Corridor)	$95.4	$90.2
Canadian National	2.0	2.5
Canadian Pacific	0.2	0.6
Missouri-Kansas-Texas	0.2	0.2

OBSTACLES TO FURTHER IMPROVEMENTS IN AMENDED AGREEMENTS

Amtrak's efforts to negotiate improvements in amended agreements face many of the same obstacles as its efforts to replace basic agreements. For example, many of the railroads with amended agreements believe that they are held responsible for delays caused by factors beyond their control, such as Amtrak equipment failures. Accordingly, they have resisted contract provisions such as Amtrak's proposals for performance penalties above the amounts of previously earned bonuses and for measuring on-time performance at intermediate points on routes. The railroads have also become more adept at identifying costs attributable to Amtrak's passenger service and are seeking reimbursement for these costs.

Proposed provisions to encourage better on-time performance

As discussed in chapter 2 (see p. 9), Amtrak believes it needs better contract provisions for encouraging the operating railroads to meet schedules at intermediate points as well as the end points of passenger routes. Amtrak also believes the contracts should contain provisions for financial penalties for poor on-time performance that are not limited to the amounts of the bonuses earned the previous year, as is now the case. The railroads have resisted this proposal because they believe that it could result in lower payments, in some cases through no fault of their own.

During the past 3 years, Amtrak has attempted to negotiate intermediate on-time performance measurements with at least two railroads which strongly opposed the concept presumably

because it would make their task more difficult. Amtrak is currently negotiating the concept with two additional railroads, and the outcome is uncertain.

Some railroads have proposed segmenting their performance on certain routes into three segments, treating each the same as a separate route, that is A to B, B to C, and C to D. This has been totally unacceptable to Amtrak because a railroad could lose several hours on the first segment but still earn two-thirds of the incentive bonus on the remaining segments. Amtrak has maintained that its approach of measuring performance from a common starting point, that is A to B, A to C, and A to D must be preserved under any circumstances to avoid rewarding a railroad for its bad performance on a previous line segment.

One of the most controversial areas related to Amtrak's efforts to negotiate any type of improved performance or penalty arrangement is the matter of responsibility for delays resulting from mechanical failure. The railroads' primary objection is that most locomotives and cars are owned and maintained by Amtrak and resulting failures are, therefore, not under the direct control of the railroad. All three railroads commenting on this report mentioned Amtrak's equipment failures as a serious impediment to an effective incentive and penalty program. (See apps. V through VII.)

Amtrak's position is that a carrier's request for relief from mechanical delays is unworkable. Amtrak maintains that it is impossible to precisely segregate delays by causal factors, and deficiencies in field reporting by carriers, especially where significant performance payments are involved, are virtually impossible to verify. According to Amtrak, delays are often blamed on mechanical failures when, in fact, they may be partially or wholly caused by human error or the carriers' failure to mitigate the delay by responsive corrective action once a mechanical or other problem has occurred. Amtrak believes it must remain firm that no relief be granted for mechanical delays.

While Amtrak is continuing its efforts to achieve more effective contract provisions regarding on-time performance through voluntary negotiations, the likelihood of any successful breakthrough is highly speculative. Most railroads are not likely to accept stronger on-time performance provisions unless Amtrak agrees to pay a very high price to compensate them for the financial risk to which they would be exposed.

New payments

Our June 1977 report showed that Amtrak paid the performing railroads incentive bonuses of $34.2 million under the first amendment agreements through June 30, 1976, for on-time performance and improved maintenance. The report showed, however, that "improvements" were due to liberal criteria and loosened schedules rather than to the incentives. Little, if any, real improvements in these areas occurred under these agreements. The schedules and the tolerances for on-time performance were subsequently tightened in several important respects in the second amendment agreements, and the bonuses dropped from over $16 million in fiscal year 1976 to an estimated $9.8 million in fiscal year 1980.

While Amtrak was improving the performance and incentive provisions of the amended agreements, however, the operating railroads were in many cases also improving upon their ability to claim new and additional categories of incremental costs attributable to passenger service operations. For example, while negotiating the second amendment agreement with the Southern Pacific Transportation Company which became effective on July 1, 1977, Amtrak projected the new agreement would bring about a decrease of $856,673 in incentive payments. However, due to inflation and the addition of cost elements not reimbursed under the first amendment agreement, operating costs were subsequently expected to increase $827,717 annually. The new payments negotiated by Amtrak covered such things as crew training, avoidable routine maintenance of facilities, signal maintenance, and fuel consumed during freight train delays.

In some cases the railroads asserted that they incur additional costs in their freight service as a result of their obligation to operate passenger trains. Such costs have not been quantified or clearly recognized by Amtrak as avoidable costs to the railroads. However, Amtrak has agreed to pay the railroads amounts to cover all costs not specifically identifiable, including increased freight service costs.

Amtrak has also negotiated "other costs" reimbursement amounts in most of its amended agreements. Amtrak has said that such payments essentially represent negotiated amounts for reimbursement to the railroads for their incremental maintenance-of-way expenses.

The ability of the railroads to demand more money from Amtrak was discussed in a Department of Transportation reevaluation of Amtrak completed in January 1979. Between 1972 and 1977, billings from railroads for work performed under

contract, excluding incentive bonuses, increased about $37.5 million. A study supporting the DOT report 1/ stated, in part, that the increased costs reflected efforts by the railroads to fully recover their costs through better cost documentation and dedication of their facilities to passenger service. It also concluded that the trend would cause the railroads to demand increased compensation from Amtrak in the future.

In its August 29, 1980, comments (see app. II), Amtrak acknowledged that such new payments basically reflect the fact that the railroads have in many cases increased their ability to identify costs which are attributable to Amtrak's passenger operations. Amtrak also stated that, in considering possible renegotiation of the agreements in order to reduce costs in particular categories, it must also be kept in mind that the railroads may assert an entitlement to be reimbursed for additional incremental costs in other areas for which no compensation is now specifically provided.

OTHER AMTRAK EFFORTS TO ACHIEVE MORE EFFECTIVE RELATIONSHIPS WITH OPERATING RAILROADS

In addition to Amtrak's efforts to negotiate better provisions into its contracts with operating railroads, it has sought relief in a few instances by going to court or the ICC to settle disputes with the railroads. In April 1980, Amtrak asked that its authorizing legislation be revised to give it more power in dealing with the railroads. An August 1980 consultant report to Amtrak also suggested some ways in which Amtrak could make its dealings with operating railroads more effective.

ICC and judicial resolution of disputes

Amtrak and the railroads from time to time have resorted to ICC and the courts for arbitration of contract disputes. ICC has jurisdicition under section 402(a) of the Rail Passenger Service Act to order the provision of services and facilities and determine appropriate compensation whenever Amtrak and a railroad reach an impasse in their negotiations.

Most of the cases brought before ICC under section 402(a) involved Amtrak's gaining access to needed terminal or railroad

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1/Analysis of Amtrak's Costs; Temple, Barker and Sloane, Inc., February 15, 1979.

facilities and determinations of just and reasonable compensation. ICC's major determinations in this category have related to the Washington Terminal Company, the Texas and Pacific Railway Company, the Terminal Railroad Association of St. Louis, and the Minnesota Transfer Railway Company. ICC generally ordered that Amtrak be provided the services and access it requested, but the terms and compensation were not always satisfactory to Amtrak.

Amtrak found the case involving the Texas and Pacific Railway Company to be particularly unsatisfactory because the payments ordered were higher than Amtrak was paying other railroads for similar services. This case led to the amendment of section 402(a) in 1978 to clarify how Amtrak payments are to be based. This amendment is consistent with Amtrak's views.

The example of ICC arbitration that seems most similar to the situation Amtrak now has with several railroads is its determinations in a long standing dispute between Amtrak and the Union Pacific Railroad Company. The parties had tried unsuccessfully from mid-1973 to 1976 to negotiate an amended agreement. Based on the railroad's insistence, the parties filed a joint application in April 1976 to have ICC determine just and reasonable compensation for the provision of service to and use of tracks and facilities by Amtrak. In its May 1977 decision, ICC established guidelines governing compensation, performance, and incentives. Based on this decision, the parties reached agreement in principle in November 1977 and executed an amended agreement effective January 1, 1978. Both parties gained some of the improvements they wanted, and it appeared that the financial and operational changes achieved would promote an improved relationship between the railroad and Amtrak.

In December 1979 Amtrak initiated a suit against the Southern Pacific Railroad to obtain relief from delays due to freight train interference with passenger train operations. According to Amtrak, temporary relief was afforded in a consent decree and a final decision is awaited from Federal district court. Amtrak also believes the suit helped establish its credibility with contracting railroads. It has said the suit increased its ability to evaluate railroad performance by internally developing improved skills to investigate the adequacy of railroads' schedules, operating practices, and facilities.

Amtrak's legislative proposals

Amtrak has proposed and/or supported legislation to strengthen its position in dealing with the operating railroads,

primarily by requiring incentives for meeting intermediate point schedules and penalties for poor on-time performance. Such legislation has been considered, but not enacted.

In considering the Amtrak Reorganization Act of 1979, the Congress considered provisions for encouraging better on-time performance of Amtrak trains but did not include them in the final legislation. Amtrak opposed the House version of these provisions because it believed the provisions were weak and possibly counterproductive.

Amtrak's most recent attempt to obtain legislation strengthening its bargaining position was in April 1980. Major factors leading to Amtrak's decision to again seek such legislation were its unsuccessful attempts to obtain improved performance objectives through voluntary cooperation from the operating railroads and the recently enacted legislative goal of improving on-time performance 50 percent by 1982.

According to Amtrak, the April 1980 proposals would require some railroads to exert greater efforts, but would not penalize any railroad which is making a reasonable effort to fulfill contractual and statutory obligations to provide good service. Amtrak believes the new legislative provisions it proposed would deal with some of the major problems which have adversely affected the speed and reliability of its intercity rail passenger service. Amtrak's proposals would:

--Require penalties to be assessed against an operating railroad's base compensation if on-time performance at passenger stations designated by Amtrak fell below 75 percent before 1982, 80 percent in the period 1982-84 and 85 percent beginning in 1985. Amtrak and an operating railroad could contractually agree to alternate standards for performance penalties and could continue to contract for payment of incentives for high-quality performance.

--Require the Federal Railroad Administration to carefully survey the current condition of rail lines used in Amtrak service, and authorize the Administration to order rail lines restored to that condition or any higher level which may be specified by other legal requirements or by contract.

--Authorize the Secretary of Transportation to order a railroad to operate additional Amtrak trains on existing or new routes. Compensation for such additional operations would be as provided by existing

contracts, or as determined by the ICC under its existing jurisdiction if there were no applicable agreement.

--Require the conductor of each Amtrak train to keep a log of each train trip to accurately record the incidence and cause of each delay which exceeds 5 minutes.

--Authorize the Secretary of Transportation to review State and local speed restrictions, and to revise or eliminate any such restriction which the Secretary determines imposes an unreasonable burden on interstate commerce.

--Entitle a railroad to receive an additional tax credit equal to 10 percent of the amount of its expenditures for improvements to its rail lines which Amtrak agrees in advance will significantly benefit Amtrak operations by permitting faster operations or improved reliability.

Amtrak has told us that the proposed legislative standards would also restrict ICC's flexibility in establishing performance arrangements pursuant to section 402(a) of the Rail Passenger Service Act.

Amtrak's legislative proposals were introduced in the House as H.R. 7021, but according to Amtrak, no significant action on the proposed legislation has occurred. We did note, however, that section 216 of the Passenger Railroad Rebuilding Act of 1980 (Public Law 96-254) amended section 402 of the Rail Passenger Service Act to permit the Secretary of Transportation to order, under certain conditions, the operation of additional trains on schedules based on legally permissible operating times.

Consultant's report regarding passenger service contracts

In August 1980, Amtrak received a report 1/ from Reebie Associates on some of the challenges and opportunities facing Amtrak in the decade ahead. The report, which encompasses a broad range of subjects, includes recommendations for devising more effective contract relationships with the railroads providing passenger services.

1/"Amtrak--Issues For The 1980's" report prepared for the National Railroad Passenger Corporation by Reebie Associates, Transportation Management Consultants.

A number of the consultant's findings give further support to our conclusions that Amtrak needs

--more effective incentives for encouraging on-time performance,

--improved methods for restraining costs, and

--additional approaches to obtaining railroad agreement on improved contract provisions.

Amtrak officials have indicated that they agree improvement is possible in each of these areas and that they are currently pursuing initiatives in each area. However, they have pointed out that the section of the consultant's report dealing with passenger service contracts contained some significant factual errors, and that implementing many of its recommendations might require overcoming significant practical problems or paying substantial additional costs by Amtrak. For example, Amtrak officials said that the consultant's recommendations for introducing competition into Amtrak's present sole-source arrangement with each of the contracting railroads would be very difficult to implement because of various labor union agreements. Despite these misgivings, however, Amtrak officials have assured us that they will consider the report thoroughly and use it to try to make improvements in passenger service contracts.

CONCLUSIONS

Amtrak's contracts with other railroads for passenger services is a most important element of Amtrak's operations because, pursuant to these contracts, the railroads provide the services that appear to be most important to the traveling public. One of these important services is to get the trains to their destinations on time. If these services are not performed adequately, Amtrak cannot succeed.

Amtrak has devoted considerable effort to developing and administering passenger service contracts and has made progress, particularly in negotiating incentives for on-tine performance. More improvements are needed, however, if Amtrak is to provide timely and cost-effective transportation services to the public. Amtrak's efforts to achieve these additional improvements have not been very successful so far because the railroads are either unwilling or unable to agree to Amtrak's proposals. Although we did not evaluate them in-depth, some of the railroads' reasons for not agreeing with Amtrak's proposals may have merit.

Because Amtrak's relationship with the railroads is basically a sole-source procurement arrangement, Amtrak's bargaining power and alternatives seem limited. Amtrak has attempted, on a limited basis, to improve its position through court suits, the ICC, and the Congress, but these efforts have not resulted in all of the improvements needed in the passenger service contracts. The Rail Passenger Service Act established a process for resolving Amtrak disputes with operating railroads--taking the disputes to ICC. Amtrak should have given this process more of a chance to work before seeking legislative changes.

The August 1980 consultant's report, which Amtrak is now reviewing, seems to provide additional alternatives for Amtrak to consider in trying to improve its passenger service contracts, including long-term actions such as the possibility of introducing competition into the present sole-source arrangements.

AMTRAK COMMENTS AND OUR EVALUATION

Amtrak said that, from time to time, it reassesses the possibility of taking additional cases before ICC, but does not take any form of litigation lightly, including taking matters before ICC. It said that it could not determine that the likely improvements in costs or operating relationships resulting from ICC consideration would warrant the expenses and effort involved. It also pointed out that it has unsuccessfully attempted to obtain legislation to improve its bargaining position with the railroads.

We are also unable to predict the outcome of ICC deliberations on Amtrak's present disagreements with the operating railroads. This lack of experience and knowledge along with the limitations on Amtrak alternatives for improving the situation are precisely the reasons we believe that Amtrak should take additional cases before ICC.

Present law clearly provides that ICC is where disputes between Amtrak and the railroads are to be resolved and until Amtrak gives this process a reasonable chance to work, conclusions that the process requires more effort than is justified by the results seem unfounded. If several attempts at asking ICC to resolve disputes with operating railroads show that this process does not work satisfactorily, however, Amtrak would have a much more convincing argument for asking the Congress to make appropriate changes. For this reason, we believe that Amtrak's previous attempts to obtain legislation in this area were premature.

In the draft report on which Amtrak commented, we suggested that Amtrak add incentives to its passenger service contracts for on-time performance all along passenger routes rather than just at end points and that it develop a specific program for renegotiating all passenger service contracts whenever the term of the compensation provisions expire with special emphasis on the remaining original agreements. We have not included these suggestions in the final report.

In its comments, Amtrak noted its efforts to get incentives for meeting intermediate point schedules included in the contracts. In view of these efforts and their lack of success, we decided that our suggestion along these lines was not appropriate.

We continue to believe that Amtrak needs to renegotiate its passenger service contract provisions, but have dropped our general suggestion in favor of a more specific recommendation regarding Amtrak's overall strategy for getting needed changes made. Furthermore, we believe that Amtrak has not adequately tested procedures established in the law. Amtrak's apparent strategy is to seek improvements through legislation. We are not convinced that this is necessary.

DEPARTMENT OF TRANSPORTATION COMMENTS AND OUR EVALUATION

DOT said in its comments (see app. III), that our report correctly noted that the contractual relationship between Amtrak and the freight railroads is unique in that each of the contracting railroads is a "sole source" for Amtrak service between points on its line. It said that to speak then of "improving" such contracts through negotiation is somewhat misleading.

DOT said the railroads generally perceive the requirement that they afford Amtrak operational priority while being reimbursed only for "avoidable costs" to be a disruption of their freight service and an economic hardship. As a result, according to DOT, the carriers have little incentive to enter into "revised" contracts that would improve the quality of Amtrak service and/or lower Amtrak's unit cost. It said that unless Amtrak is prepared to offer additional compensation, the possibility of meaningful gain through negotiation seems remote.

DOT suggested that proceedings before ICC may not be a good solution because its decision in a previous case permitting compensation in excess of avoidable cost was overturned by the Congress. Instead, DOT said we should consider

recommending that the Congress stipulate the basis for Amtrak compensation which would take effect after a certain date unless new agreements are negotiated by the parties.

In the interest of more effective intercity passenger train service, the Congress may eventually have to intervene through more specific legislation to govern the service and compensation arrangements between Amtrak and the contracting railroads. As noted previously (see p. 26), section 402(a) of the Rail Passenger Service Act has been revised based on the ICC case noted by DOT in a manner satisfactory to Amtrak. We continue to believe, as discussed above, that more cases should be taken before ICC before Amtrak or DOT decide that the process provided in section 402(a) is deficient. If subsequent experience shows that this process is unsatisfactory, Amtrak and possibly DOT should suggest changes based on appropriate justification.

RECOMMENDATIONS TO THE PRESIDENT OF AMTRAK

We recommend that the President of Amtrak try to obtain needed improvements in passenger service contracts with other railroads by taking additional cases to ICC in which Amtrak is unable to obtain railroad agreement on incentives for meeting intermediate point schedules and penalties designed to encourage good performance and cost restraint. We also recommend that if, after reasonable time and efforts, the above actions fail to produce the needed improvements in Amtrak's passenger service contracts, the President, as a last resort, seek guidance and action from the Congress.

PREVIOUS GAO REPORTS ON AMTRAK

REPORTS REQUIRED BY THE RAIL PASSENGER SERVICE ACT, AS AMENDED

Quality of Amtrak Rail Passenger Service Still Hampered by Inadequate Maintenance of Equipment (RED-76-113, June 8, 1976).

Amtrak's Incentive Contracts With Railroads--Considerable Cost, Few Benefits (CED-77-67, June 8, 1977).

Should Amtrak Develop High-Speed Corridor Service Outside the Northeast? (CED-78-67, Apr. 5, 1978).

Amtrak's Inventory and Property Controls Need Strengthening (CED-80-13, Nov. 29, 1979).

OTHER REPORTS

Railroad Passenger Service, Analysis of Train Scheduling and Operations, prepared for the General Accounting Office as part of its review of the operations of the National Railroad Passenger Corporation, B-175155, Feb. 22, 1973.

Amtrak Needs to Improve Train Conditions Through Better Repair and Maintenance, B-175155, June 21, 1973.

Railroad Reservation, Information and Ticketing Services Being Improved, B-175155, Aug. 22, 1973.

Fewer and Fewer Amtrak Trains Arrive On Time--Causes of Delays, B-175155, Dec. 28, 1973.

How Much Federal Subsidy Will Amtrak Need? (RED-76-97, Apr. 21, 1976).

An Analysis of Amtrak's Five Year Plan, GAO Staff Study (PAD-78-51, Mar. 6, 1978).

Amtrak's Subsidy Needs Cannot Be Reduced Without Reducing Service (CED-78-86, May 11, 1978).

Should Amtrak's Highly Unprofitable Routes Be Discontinued? (CED-79-3, Nov. 27, 1978).

Amtrak's Economic Impact on the Intercity Bus Industry (PAD-79-32, Jan. 12, 1979).

Problems in the Northeast Corridor Railway Improvement Project (CED-79-38, Mar. 29, 1979).

How Much Should Amtrak Be Reimbursed for Railroad Employees Using Passes to Ride Its Trains? (CED-80-83, Mar. 28, 1980).

Alternatives for Eliminating Amtrak's Debt to the Government (PAD-80-45, Mar. 28, 1980).

Impact of Work Cutbacks on Northeast Corridor Improvement Project (CED-81-23, Oct. 31, 1980).

National Railroad Passenger Corporation 400 North Capitol Street N.W. Washington D.C. 20001 Telephone (202) 383-3000

Amtrak

August 29, 1980

Henry Eschwege
Director
Community and Economic Development
Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Eschwege:

By your letter dated July 31, 1980, the General Accounting Office (GAO) transmitted to Amtrak for comment a draft of a proposed report concerning Amtrak's contracts with its operating railroads. Shortly after we received the report, Amtrak representatives advised Mr. Herbert McLure of your Division of our serious concerns as to the accuracy and validity of the draft report. On the basis of several discussions, there appeared to be agreement between our staffs that the draft report contained a number of specific factual inaccuracies and that the report failed to include significant information concerning several important undertakings by Amtrak to improve its agreements. Since it appeared that any report which GAO might finally publish would have to be substantially different from the draft, Amtrak requested that the draft be withdrawn for substantial revision.

We have now been advised that you do not feel that you can withdraw the July 31 draft report. As a result, we must provide a formal response to the draft that covers areas of error or omission which have been resolved in the past by discussion at the staff level. Although our comments may seem to be rather pointed, we see no reasonable alternative under the circumstances. Obviously, we cannot afford to gloss over any aspects of the draft. The need for clarity is evidenced by the GAO's treatment of essentially the same subject matter in a report which was issued in June of 1977. In preparing that report, the GAO solicited Amtrak's comments and we worked closely in a process that produced many changes in the final report. In spite of

the clear impression Amtrak received that the 1977 GAO report would squarely address the most significant issue confronting our contracting efforts at that time, that report completely avoided taking any position on the proper relationship between Amtrak and its operating railroads, and the role of the ICC in determining cost and performance provisions when Amtrak and a railroad could not agree. This historical communication problem partially explains Amtrak's concerns about the final report which GAO might produce at the current time and our feeling that we must submit extensive formal comments.

Amtrak is most concerned by the following elements of the draft report:

1. It does not address Amtrak's current efforts to obtain better performance arrangements in its contracts.

2. It contains several factual errors in the discussion of existing contracts.

3. It does not establish a significant basis for its highly critical conclusions.

4. It evidences a continuing misunderstanding of flat rating of costs.

5. The title, Amtrak Should Revise and Improve Its Passenger Service Contracts With Other Railroads, is derogatory and misleading, although it is indicative of the tenor of the report.

[GAO Comment: The report has been revised to correct factual errors as appropriate, better recognize Amtrak efforts to improve contracts, and better recognize the limitations on Amtrak's options in dealing with the railroads. The report's title has also been changed, however, the thrust, including the conclusions, remains basically the same. The "misunderstanding" Amtrak refers to could be more accurately described as a disagreement with Amtrak's philosophy for setting flat rates.]

This letter will attempt to discuss these problems. As is always the case in a formal written response, there is a limit to the amount of information that can reasonably be provided. Amtrak hopes and trusts that GAO will follow up on the information provided in this letter so that it can obtain all of the information which might be useful to it in preparing a final report. Amtrak assumes such a final report will be fundamentally different from the current draft, and we therefore hope to be given a further opportunity to comment upon it before it is published.

[GAO Comment: We attempted several times to obtain any factual support Amtrak had available for its critical comments or any other information it believed might be pertinent. As noted above, this process resulted in correction of some factual errors, but did not change the report's basic thrust.]

Amtrak's efforts to improve performance provisions

The June 1977 GAO report on Amtrak's contracts contained several recommendations (at page 41) with respect to ways in which Amtrak's contracts with the railroads should be improved. The two most significant recommendations concerned the assessment of penalties for performance below a base line of acceptable performance, as well as provisions for measuring performance at intermediate stations. Amtrak has considered both of these provisions to be desirable goals for many years. At the time of the 1977 report, several incentive contracts had a limited form of penalty for performance below a specific level (typically 70 percent), but such penalties could only be assessed against incentives previously earned. Although we have continued to seek a stronger penalty arrangement, there has been little serious consideration by the operating railroads of an arrangement which could permit them to lose any of their base compensation.

At the same time, Amtrak has vigorously pursued a performance arrangement which would require measurement of on-time performance at several intermediate points. Such an arrangement should maximize adherence to schedules at all stations on a route, rather than placing the entire emphasis on on-time arrivals at end points as in the past. Although the arrangement Amtrak has proposed would not reduce a railroad's incentive potential, it does represent something new and untried and is perceived as requiring a greater effort on the part of an operating railroad. The basic negotiation problem in this area is the same which existed in 1977; Amtrak cannot obtain something significant through negotiation unless we are negotiating from a position of strength or are able to give a railroad something which is important to it. Amtrak has not yet entered into an agreement with any railroad for implementation of such a performance arrangement, but we feel we are very close at the current time to obtaining an improved performance arrangement with at least one railroad.

[GAO Comment: Amtrak's efforts to negotiate better provisions for encouraging on-time performance, including intermediate points, are discussed on pages 22 to 28. In addition, in view of Amtrak's unsucessful attempts to add provisions to passenger service contracts regarding intermediate point schedules, we did not include in our final report our draft report proposal that Amtrak add such provisions to the contracts.]

It is not feasible for Amtrak to make public much information with respect to its strategy or the precise current status of its efforts to negotiate improved performance arrangements with individual railroads. Amtrak can, however, discuss its performance goals as well as its efforts to obtain legislative action in this area. On the basis of the draft report, Amtrak assumes that the GAO is unaware that Congress gave some consideration to the issue of improved performance in the Amtrak Reorganization Act of 1979, but ultimately deleted any provisions dealing with this sensitive topic because of the difficulty in developing appropriate provisions for inclusion in that legislation. Amtrak was very firm in the recommendation to the Congress that the provisions which were proposed in the House version of the 1979 legislation be significantly modified or completely eliminated since they were quite weak and might prove to be counter-productive. I am enclosing as Attachment A to this letter a copy of the letter from President Boyd to Congressman Madigan, dated July 17, 1979, concerning those provisions.

Amtrak has subsequently developed and formally submitted to Congress a rather broad package of legislative proposals which would address a number of operating and performance problems. The provision of the proposed legislation designed to ensure on-time performance at all stations is probably the most important single provision. However, the package does contain various other significant provisions designed to maintain the comfort and reliability of Amtrak train services and also to permit the expansion and improvement of such service. A copy of Amtrak's legislative proposals is enclosed as Attachment B. A bill (H.R. 7021) containing these provisions has been introduced in the House of Representatives, but there has not yet been any significant action on this legislation.

The GAO draft report correctly notes that Amtrak has had difficulty in obtaining adequate on-time performance from the railroads. Although there has been some improvement, Amtrak does not have any simple solutions to the problems which exist in this area. We have, however, proposed legislation and are attempting to negotiate better contractual provisions. In addition, as the report briefly notes, Amtrak requested that the Department of Justice bring a lawsuit against the Southern Pacific Railroad seeking an injunction to enforce the statutory requirement that passenger trains not be interferred with by freight train operations. Amtrak played a substantial role in all phases of that lawsuit. Although a five-day evidentiary hearing was held in February of this year in that suit, the court still has not acted on the Justice Department's request for a preliminary injunction. The point is that the issues in this area are difficult and there do not appear to be any quick or simple solutions to them. Amtrak is devoting considerable resources to obtain improvement, and superficial assessment of our efforts or the problems can only detract from effective understanding and action with respect to these issues. (The GAO's suggestion on page 12 of the draft report that "simply eliminating or greatly reducing recovery times included in current schedules" may be the way to institute intermediate point performance incentives indicates a

lack of awareness of operating realities and of the practical limits on Amtrak's legal rights.)

Amtrak does not understand how the GAO either failed to learn about Amtrak's current efforts in the course of its investigation, or, if the GAO investigators knew about Amtrak's efforts, why the draft report fails to discuss them. I can only assume that the review which was conducted by the GAO was not in the depth necessary to adequately ascertain the facts. Indeed, several elements of the draft report appear to be based primarily on a number of documents obtained from Amtrak's contract audit group which were not even final audit documents or do not represent Amtrak policy.

[GAO Comment: The 1979 and 1980 legislative proposals regarding Amtrak's passenger service contracts are discussed on pages 26 to 28. The court suit is described on page 26. Also, the report, especially chapter 3, has been revised to better describe the difficulties Amtrak faces in attempting to negotiate improved contracts. As noted on page 30, however, we believe that these legislative efforts were premature because Amtrak did not give the legally established process an adequate chance to work. As noted earlier, the suggestion on page 12 of the draft has not been included in the final report.]

Costs and Flat Rates

The draft report concludes that Amtrak needs more flexibility to revise flat rated costs from time to time when it is determined that individual cost items are "inequitable". This conclusion appears to be based on a misunderstanding of the purpose and operation of flat rates, as well as on incorrect information with respect to specific instances where the GAO feels that Amtrak paid more than it should have. The GAO report does recite that flat rates can be beneficial in simplifying and standardizing Amtrak's payment for many of the services provided by railroads, and that they also provide an incentive for greater efficiency on the part of the railroads. The greater efficiency then benefits Amtrak when cost provisions are renegotiated in the future. There is no doubt that flat rates can be risky if they are not fully researched and strenuously negotiated, since they do lock in the agreed upon charges for a particular level of service for specified minimum periods of time. The alternative to this form of stability in the contractual relationship between the parties would be to revert to the very loose arrangement of the original Basic Agreement of which the GAO is so critical in another portion of the report.

[GAO Comment: The misunderstanding and misconception Amtrak refers to in this section could more accurately be described as a disagreement with Amtrak's policies regarding flat rates. As discussed on page 14, we do not agree that reverting to original agreement provisions is the only alternative to Amtrak's present flat-rate policies.]

The GAO also points out that there is some difficulty in auditing flat rates. One of the basic purposes of flat rates is to reduce the manpower and administrative requirements involved in the need to frequently audit and then attempt to adjust the details of Amtrak's cost relationship with its operating railroads. Another purpose is the avoidance of loss of cash for the period between payment and subsequent recovery of overpayments through the cumbersome process of auditing and negotiating (or litigating) refunds which is involved when services and costs are not specified.

The draft report contains three examples of alleged overpayments totalling approximately one hundred thousand dollars annually, and states that these examples show the existence of significant inefficiencies in the costing provisions of Amtrak's contracts. Each year, Amtrak pays approximately one hundred million dollars in flat rated costs to its operating railroads. Even if the problems the GAO identified were accurate examples of overpayments to railroads and if there were no instances where Amtrak was underpaying a railroad in a flat rated cost item, the total shown by the GAO is insignificant. Amtrak does not doubt, however, that GAO can produce several new examples of instances in which Amtrak may have paid more than a railroad's actual incremental costs. (Since flat rates are negotiated with some give and take, the purpose is not to achieve precise accuracy on each and every cost item. Instead, it is reasonable to expect that there may be some small amount of overpayment or underpayment in individual items. Most importantly, the aggregate payment should be reasonable.)

[GAO Comment: As discussed on pages 10 to 14, neither we nor Amtrak know the magnitude of incorrect flat-rate payments. We believe, however, that our report demonstrates a systemic problem that needs correction.]

In addition to the misconception noted above, Amtrak believes that most of the specific examples concerning flat rates cited in the draft report are factually inaccurate or are misleading. The draft report cites from audit reports concerning "arbitrary" payments for train and engine crews working on Amtrak trains on the Delaware and Hudson and the Richmond,

Fredericksburg, and Potomac railroads. The draft report relied on preliminary versions of those audit reports. The final audit reports dealing with these costs found that there were no substantial differences between the reasonable costs incurred by the railroad and the amounts paid by Amtrak for train and engine crews pursuant to the agreement provisions calling for flat rating. Copies of the final audit reports for both the D & H and the R F & P are enclosed with this letter as Attachments C and D respectively.

On page 11 of the draft report, the GAO discusses an Amtrak audit of costs incurred in connection with operations by the Milwaukee Road in which it was determined that flat rate payments in six categories exceeded Milwaukee Road's actual costs by a total of $25,000 during an 18-month period. This latter amount can only be characterized as insignificant in relation to our total payments of $12.6 million to Milwaukee Road during the same period. More importantly, however, the GAO did not bother to comment on the flat rated items in the same agreement which may have been favorable to Amtrak. For example, the "other costs" item essentially represented a payment for incremental maintenance of way expenses and, as a part of the negotiated agreement, was not subject to inflation indexing as most other costs are. This lack of indexing on this one item saved Amtrak $19,506 during the period specified, and has saved Amtrak more than $150,000 during the period it has been in effect. (The reason for labeling incremental maintenance of way payments as "other costs" was the product of a previous dispute within Amtrak over the proper posture which we should adopt in dealing with this issue which involved complicated and sensitive legal ramifications. That dispute has now been resolved.) Amtrak is not certain what problem the draft report is referring to in its brief mention of the Amtrak audit of Burlington Northern expenses which was issued in August of 1979.

> [GAO Comment: Different examples are used in the final report. Amtrak's statements that other flat rates were also incorrect, but in Amtrak's favor, further demonstrate this need for a mechanism for changing flat rates during a contract period. (See page 12.)]

Finally, the GAO draft report states that Amtrak contract auditors believe that the contracts should provide for more frequent revision of flat rates. The report includes a draft provision which, according to the report, Amtrak's auditors believe should be included in the contracts. The thrust of the provision would undermine the certainty, administrative simplicity, and incentive for greater efficiency on the part of the railroad, which are the primary benefits of flat rating. The quoted provision was included in a memorandum prepared by a member of the audit staff and represented a personal recommendation. That recommendation has not been adopted as audit policy or as Amtrak policy. In fact, it is contrary to Amtrak policy. In preparing the draft report, however, the GAO made no effort to

determine the status of this suggestion which was proposed by an auditor over a year and a half ago.

[GAO Comment: The auditor's suggested provision was not presented in our draft report as being Amtrak policy, but rather as a specific example of the general type of mechanism we believe is needed. The auditor's suggested provision needed revisions and we have deleted it from the final report, but we continue to believe that such a mechanism is needed.]

The GAO questions some of the "new" payments made by Amtrak under the Second Amendment Agreements and indicates that Amtrak may have agreed to make these payments in order to balance or "offset" reduced incentives which railroads might earn. The incentive potential is a part of the total compensation payable to a railroad, and agreement probably could not be reached if the railroads were not given this opportunity to earn amounts in excess of their incremental costs. Amtrak attempts, however, to set the level of incentives so that they will serve their intended purpose of encouraging a railroad to exert the effort required to provide quality performance. At the same time, care is taken to establish reimbursement levels for specific cost categories which are individually reasonable and, of equal or greater importance, reasonable in the aggregate.

The GAO specifically cites the "other costs" provision in the L & N agreement and notes that Amtrak's auditors had said they were unable to determine whether this was a reasonable payment in light of the railroad's actual expenses. Amtrak's contract administration group is responsible for the negotiation and the administration of the amendment agreements and could easily have enlightened the GAO investigators on this point. This provision was designed to cover L & N's incremental costs with respect to the sensitive issue of maintenance of way costs, which was discussed above. Contrary to the implication of the report, the flat rate reimbursement amount for this item was arrived at without reference to the performance provisions.

On page 8 of the draft report, the GAO also points to a 5 percent mechanical management fee paid to the Southern Pacific Railroad as a "balancing" figure because it does not appear to be based on any incremental costs incurred by Southern Pacific. It is true that this amount does not represent reimbursement for incremental costs. Provisions of this nature in some agreements were designed as an incentive against which the railroad could be penalized for failure to perform an adequate volume of heavy cleanings and pre-season maintenance of equipment. Amtrak hoped to improve upon railroad maintenance performance obtained under previous arrangements. While this type of provision appears to have been quite effective on some railroads (most notably the Burlington Northern), it is unlikely that we would choose to include it in future agreements.

The draft report is correct in noting that the agreements include payments for items which did not exist in previous agreements. This basically reflects the fact that during the period in which Amtrak has been attempting to improve upon the cost and performance provision of the agreement, the operating railroads have in many cases improved upon their ability to identify and quantify some additional categories of incremental costs which are properly attributable to Amtrak's passenger operations. As a result, in considering possible renegotiation of the agreements in order to reduce costs in particular categories, it must also be kept in mind that the railroads may assert an entitlement to be reimbursed for additional incremental costs in other areas for which no compensation is now specifically provided.

[GAO Comment: The final report was revised to remove the conclusion that the new payments, including those to L & N and Southern Pacific, were included only to off-set or balance reduced payments in other areas. However, it seems inconsistent with Amtrak's basic policy for setting payments to railroads to include a payment that is not based on incremental costs or that is not a reward for some specific performance accomplishment. As noted above, payments to Southern Pacific and other railroads were included primarily as amounts against which the railroads could be penalized for poor performance.]

Renegotiation of Original Basic Agreements

The GAO is correct in noting that Amtrak still has five railroads operating under the original 1971 Basic Agreement, and that the 1971 agreement has significant deficiencies with respect to encouraging or requiring quality performance. It also lacks the definition of services and the flat rating used to control costs which have been included in the amendment agreements. While Amtrak believes that the performance and cost provisions which have been developed and implemented in the amendment agreements represent a significant improvement, it does not follow that Amtrak is willing to have these provisions included in all agreements with railroads regardless of the cost which might be involved in attaining that result. Amtrak has developed the ability to cope with the cost provisions in the five remaining original Basic Agreements in spite of their shortcomings. With respect to performance, incentives have not proven attractive enough to the five railroads involved to induce them to amend their contracts to include the performance provisions which Amtrak is now proposing. (The disinterest in incentives is, of course, readily understandable on the part of railroads whose performance simply does not approach the 80 percent level at which it could earn incentives on a consistent basis. The draft report specifically mentions this problem on the part of Conrail and the Illinois Central Gulf.)

Amtrak does have the option of requiring a proceeding before the ICC under Section 402(a) of the Amtrak Act with any of the five railroads still under the 1971 Basic Agreement, and we do reassess that possibility from time to time. While it is not accurate to say that Amtrak is reluctant to let any compensation cases go to the Commission, we do not lightly undertake any form of litigation. We have not yet been able to determine with respect to any of the five railroads that the likely improvement in our costs or operating relationship warrants the expense and effort involved, or the risk of being required to make higher payments which would be involved in a proceeding before the Commission under Section 402(a). In summary, Amtrak feels that the status quo with respect to the five remaining original Basic Agreement railroads is currently acceptable, but we will continue to reassess the potential for improvement through negotiation or litigation in the same manner we attempt to continuously reassess our relationship with each of our operating railroads.

[GAO Comment: Amtrak's comments are on pages 17 and 30.]

Conclusion

Both the tone and substance of the draft GAO report on Amtrak's railroad operating contracts are highly critical of Amtrak. No sound basis is shown in the report for such criticism, and Amtrak feels that none exists. Amtrak is working hard on a number of fronts in order to improve the on-time performance of its trains at all stations, but the GAO does not even acknowledge an awareness of those efforts. Amtrak recognizes that flat rating of costs is not a perfect arrangement, but we feel it is more effective than any of the alternative costing arrangements which are available. When hundreds of millions of dollars per year are being paid to railroads for services they provide to Amtrak, it is inevitable that any arrangement may contain some individual cost items which will appear to auditors to be less than optimal. In general, however, Amtrak believes that flat rating of costs has worked effectively in encouraging railroad efficiency, simplifying administration, and generally keeping Amtrak's total costs for its dealings with railroads to a minimum. Finally, while we do not agree that it is feasible to constantly renegotiate any and all contracts in which we find a few provisions which we might prefer were different, we certainly agree that it is important to review existing agreements continuously and evaluate possible alternative arrangements.

A major recommendation of the draft report is that Amtrak work more diligently to amend existing agreements, refer individual cases to the ICC if necessary, and seek additional legislative action to improve the applicable statutory provisions if we are not satisfied by the action taken by the ICC. The draft report indicates an apparent lack of awareness of the fact

that Congress acted in 1978 to amend Section 402(a) to clarify the applicable statutory compensation standard. While that change in the law may effect some improvement, it still leaves the Commission with considerable discretion in determining costs and performance arrangements. The legislative proposals which Amtrak has submitted this year would, if enacted, restrict the Commission's flexibility in establishing performance arrangements. Proposing certain contractual goals is, of course, relatively easy. It is far more difficult to ultimately obtain railroad agreement to an arrangement which embodies such goals. In spite of its criticism of Amtrak, the draft report contains no magic formula for accomplishing that task.

Because of major omissions and numerous errors in your July 31 draft report, it is very difficult for Amtrak to comment constructively on it in this formal response. While it should be relatively easy to eliminate basic factual discrepancies through an informal process, Amtrak has been required to make this formal response. For that reason, it has been impossible to avoid many highly negative comments. While we have also included some information on the positive steps we are taking to improve our relationships with our operating railroads, we hope to have an opportunity to provide you with additional information and to discuss that information with you as you continue the preparation of a final report in light of the comments received from Amtrak and other interested parties.

[GAO Comment: We met with Amtrak officials many times after we received these written comments to try to obtain any additional information they had, but they provided relatively little. Amtrak efforts to obtain contract modifications and legislative amendments are more fully described in the final report, especially on pages 17, 22, 23, and 25 to 28. As discussed above and on pages 10 to 14, we do not agree with Amtrak's views regarding flat rates.]

Sincerely,

Paul F. Mickey, Jr.

Paul F. Mickey
Vice President-General Counsel

Attachments

APPENDIX III

U.S. Department of Transportation
Office of the Secretary of Transportation

Assistant Secretary for Administration

400 Seventh Street, S.W.
Washington, D.C. 20590

September 5, 1980

Mr. Henry Eschwege
Director, Community and Economic
Development Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Eschwege:

This letter is in response to your request for our comments on the General Accounting Office (GAO) report, "Amtrak Should Revise and Improve Its Passenger Service Contracts With Other Railroads," dated July 31, 1980.

The draft report correctly notes that the contractual relationship existing between National Railroad Passenger Corporation (AMTRAK) and the freight railroads over whose track and facilities Amtrak must operate is unique in that each of the contracting railroads is a "sole source" for Amtrak service between points on its line. However, to speak then of "improving" such contracts through negotiation is somewhat misleading.

These railroads generally perceive the requirement that they afford Amtrak operational priority while being reimbursed only for "avoidable costs" to be a disruption of their freight service and an economic hardship. As a result, there is little incentive for these carriers to enter into "revised" contracts that would improve the quality of Amtrak service and/or lower Amtrak's unit costs. We believe that unless Amtrak is prepared to offer compensation above "avoidable costs" (the level provided in the 1971 basic agreements), the possibility of meaningful gain through negotiation seems remote.

The draft report suggests that, failing a negotiated settlement, "Amtrak could seek Interstate Commerce Commission (ICC) determinations of just and reasonable compensation. . . ." However, the protracted ICC proceeding in the Texas & Pacific case, in which the Commission's decision permitting compensation in excess of avoidable costs, was finally overturned by the Congress, may indicate otherwise. Instead, we believe GAO should

consider recommending that Congress stipulate the basis for Amtrak compensation which would take effect after a certain date unless new agreements are negotiated by the parties.

If we can further assist you, please let us know.

Sincerely,

Edward W. Scott, Jr.

[GAO Comment: As discussed on page 32, the Congress may eventually have to intervene in this area, but we believe that recommendations to do so now would be premature, as were Amtrak's legislative proposals. More cases of Amtrak disputes with operating railroads should be brought before the ICC to give the legislatively established process a fair test.]

APPENDIX IV

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE CHAIRMAN

September 16, 1980

Mr. Henry Eschwege
Director
Community and Economic Development
Division
U. S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Eschwege:

This refers to your letter of July 31, 1980, enclosing a draft of your report entitled, "Amtrak Should Revise and Improve Its Passenger Service Contracts With Other Railroads," and your request for our review and comment.

As you know, the Commission continues to exercise regulatory authority to arbitrate compensation disputes among Amtrak, the railroads and other parties furnishing services to Amtrak. In light of this responsibility, I have decided to refrain from commenting on your report since to do so could pose serious questions regarding my ability to serve as an impartial decision-maker in future compensation cases. I regret I am unable to offer you our review and comment.

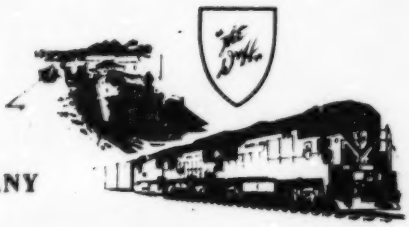
Sincerely yours,

Darius W. Gaskins, Jr.

Darius W. Gaskins, Jr.
Chairman

[GAO Comment: ICC's decision to refrain from commenting on a draft of this report is mentioned on page 3.]

APPENDIX V



DELAWARE AND HUDSON RAILWAY COMPANY
ALBANY, NEW YORK 12207

THOMAS KOPRIVA
Special Assistant to the President
(NRPC Operations Officer)

August 29, 1980
521.3

Mr. Henry Eschwege, Director
United States General Accounting Office
Washington, DC 20548

Dear Mr. Eschwege:

Thank you for giving us the opportunity to review the draft of your proposed report "Amtrak Should Revise and Improve Its Passenger Service Contracts With Other Railroads."

The report mentioned that some railroads have been dissatisfied with the incentive contracts because of failures on Amtrak owned and maintained equipment; this is only part of the problem. While it is true that equipment failures seriously affect on-time performance (and in our case, at least, we have absolutely no control over the maintenance), the following items also affect railroad performance:

1. Passenger train interference - this is the term used to describe the delay when one passenger train is delayed by another. We have a single track railroad with long distances between passing sidings, and when one of the trains is delayed (usually by causes beyond D&H control), it results in further delays to itself or to the other Amtrak train it must meet and these delays have been charged against us.

2. Delays on other railroads - the D&H crew takes the Amtrak train into Montreal, using the Canadian Pacific Railroad from Delson, PQ. When the train is on the CPR, it is under the complete control of the CPR yet any delays incurred are charged to us. This is not fair.

518-462-7714

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Mr. Henry Eschwege
August 29, 1980
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Amtrak tabulates from D&H reports the causes of delay by month. D&H delays for June, the most recent month available, were as follows:

Slow Orders	85	minutes	(10 min on CPR)
Passenger Train Interference	168	"	
Miscellaneous	1473	"	
Passenger Related Delays	22	"	
Signal Failures	194	"	(57 min on CPR)
Maintenance of Way Work	20	"	
Total reported delays	1962	"	(67 on CPR)

Thus the D&H controllable portion (slow order, signal failures, M of W work) of the delays was only 232 minutes, or less than 12% of the total. The miscellaneous category consisted mostly of delays for U.S. Customs & Immigration inspections.

On page 10 of your draft report you indicate that Amtrak auditors made a special review of our extra payments and allowances to train and engine crews in 1979 and that this audit found that D&H payments amounted to $31,044 but that D&H billed Amtrak for $57,888. We know only that Amtrak audited our records but they have never shared their findings with us so we cannot verify the accuracy of this report. We would appreciate it if your report would reflect this fact.

[GAO Comment: Railroads' views about being held accountable for delays over which they have no control are discussed on page 23. The discussion of the special review and its results which appeared on page 10 of the draft report was not included in the final report, based on Amtrak comments.]

Sincerely,

Thomas Kogan

APPENDIX VI

The Atchison, Topeka and Santa Fe Railway Company

A Santa Fe Industries Company

80 East Jackson Boulevard, Chicago, Illinois 60604, Telephone 312/427-4900

August 29, 1980

Mr. Henry Eschwege
Director
Community and Economic
Development Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Eschwege:

Mr. E. L. Petersen, Santa Fe's NRPC operations officer, has forwarded to me the General Accounting Office's draft of proposed report to Congress concerning Amtrak's passenger service contracts, along with your covering letter of July 31st requesting comments thereon.

The thrust of the draft appears to be that all existing Amtrak passenger service contracts with its operating railroads are inadequate to provide either accurate and equitable reimbursement to the railroads or effective incentives for improving quality of passenger service. The severest criticism is directed toward the original agreements of April, 1971, which still govern Amtrak operations on five railroads. While the amended agreements negotiated with other contracting railroads are regarded as significantly improved, these also are considered ineffective with respect to accurate cost reimbursement or improvement of quality of service.

In spite of the basic assumption that the original agreements are "obsolete and ineffective," perhaps the most affirmative section of the draft with respect to contractual arrangements between Amtrak and the railroads is that relating to the satisfactory implementation of the April, 1971, passenger service contract between Amtrak and Santa Fe. While one small inaccuracy relating to cost documentation appears in the section, it reflects the satisfactory working arrangement between Amtrak and Santa Fe engendered by the original agreement, which has endured for almost a decade. This working arrangement seriously challenges the draft report's conclusion (1) that the subsequent amended agreements between Amtrak and other railroads were an improvement thereon and (2) that further contract renovation is necessary.

In comparing the deficiencies of the two sets of amended agreements with the satisfactory working arrangement between Amtrak and

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Santa Fe, the draft report, in my opinion, should have reached different conclusions. First of all, as noted in the draft, the so-called "flat rates" utilized in the amended agreement lack the necessary flexibility to accurately reflect reimbursable costs. Moreover, operating practices and conditions vary from railroad to railroad and from train set to train set, and it is impossible to establish a scheme of flat rating applicable to all types of operations. Consequently, the Amtrak-Santa Fe arrangement of working out the varying and complex problems of costing as they arise has been, and is, the preferred avenue to equitable and accurate cost reimbursement.

A second conclusion which I believe the draft should reach relates to the function of incentives (or penalties) in improving quality of service, particularly on-time performance. As a generality, Santa Fe is not opposed to incentive -- or penalty -- systems for payment of performance. As correctly stated in the draft report, however, for such a system to be effective the party being rewarded or penalized for its performance must have control over the elements which affect that performance. It can be easily demonstrated from our experience that as a railroad operator we have comparatively little control over the elements that are causing Amtrak passenger train delays. It is also clear from the draft and from actual experience that these incentives, and threats of penalties, have not substantially improved the on-time performance of Amtrak passenger service on other railroads because either incentives are an improper device to attempt to improve on-time performance or deficiencies in on-time performance are not the fault of, and are beyond the control of, the operating railroads.

It is also true that Santa Fe has always taken great pride in conducting railroad operations, including those it performs for Amtrak, and consequently feels, as indicated in the draft report, that it does not really need incentives to perform passenger service operations to the best of its ability. Admittedly, our philosophy in this respect has been strained by our experience with Amtrak due to the fact that such a large portion of Amtrak passenger train delays have been caused by Amtrak's failures, particularly in the area of equipment maintenance, locomotive failures and causes related and inherent in handling rail passengers. The condition of Amtrak's equipment operated on our lines has reached a low ebb. Breakdowns of locomotives and car equipment are a daily occurrence, particularly on transcontinental trains, and have even reached the point of impinging on the safety of operations. All of this has been the subject of much correspondence and conversation with Amtrak, but without significant improvement to date.

One example of all of this is provided by a summary analysis of the operations of Amtrak trains between Los Angeles and San Diego during June, 1980, which revealed, with respect to delays of 5 minutes' or longer duration, that Amtrak or other passenger service causes

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Cont'd attributed to over 90 percent of these delays and were the sole causes for over 60 percent of such delays. On the other hand, delays attributable to Santa Fe's passenger service contract performance attributed to approximately 36 percent of the delays and were the sole cause of less than 10 percent. Consequently, incentives afforded to Santa Fe would have been futile in achieving on-time performance with respect to a vast majority of the delays; it is Amtrak to whom incentives and penalties should have been directed.

On-time performance is, of course, directly related to scheduling. As noted in the draft report, loose schedules dissipate the effectiveness of incentives. On the other hand, even as noted by Amtrak on page 8 of the draft, incentives are equally ineffective in the absence of reasonable schedules. In 1968 Santa Fe operated three round-trip passenger trains per day between Los Angeles and San Diego, much of which is over a single-track main line, with a dependably achievable schedule of 2 hours and 55 minutes in each direction. Amtrak now operates approximately six round trips per day between these cities at schedules of 2 hours and 35 minutes and 2 hours and 40 minutes. Such schedules require 90 m.p.h. operation over much of the distance, but inadequate recognition has been given to the new delays caused by the greater frequency of operation due to the trains having to meet opposing trains, as well as greater station delays from heavier patronage than when the operation first started. It is demoralizing and unrealistic to assume that on-time performance can be uniformly achieved where the schedules dictated by Amtrak do not conform to practical operating considerations. This is currently the subject of new discussions with Amtrak.

In summary, I suggest that the final report to Congress stress that the congressional goals of cost efficiency and quality passenger service cannot be gained solely from the contractual commitments of the railroads in their Amtrak passenger service agreements. As indicated above, it is Amtrak which must improve the quality of its performance so as to attain reasonable on-time performance. With respect to cost efficiency, the draft report notes that in 1972, when the railroads were providing practically all passenger services for Amtrak, a ratio of operating expenses to revenues of 200 percent was achieved based on revenues of $153 million and operating expenses of $306 million. With Amtrak providing a substantial degree of these passenger services during 1979, this operating ratio rose to 262 percent based upon revenues of $381 million and operating expenses of $998 million. Amtrak's assumption of passenger services has increased the expenses 226 percent, while revenues have advanced only 149 percent. While Amtrak might complain as to what it asserts was a "cost-plus" character of its original agreements with the railroads, it is Amtrak itself which has been operating on an

inefficient cost-plus basis over the last nine years.

[GAO Comment: The comments from the AT&SF Railway Company are on pages 20 and 21. The Company's views regarding a satisfactory working relationship with Amtrak under an original agreement correspond, we believe, with Amtrak's comment about developing the ability to cope with the cost provisions of the agreements in spite of their shortcomings. While this may be largely true because of this railroad's ability to identify Amtrak's passenger service costs, the contract arrangement is still subject to the same deficiencies noted by Amtrak on page 5. As the comments indicate, there are still some disagreements to be worked out between the AT&SF and Amtrak regarding realistic schedules for the trains operated by the railroad.]

Very truly yours,

John S. Reed
Chairman and
Chief Executive Officer

P.S. In addition to your consideration of these comments, I would sincerely appreciate the reproduction of a copy thereof in your final report to the Congress.

APPENDIX VII

Operating Department

Chessie System

2 North Charles Street
Baltimore, Maryland 21201

October 9, 1980

Mr. Henry Eschwege
Director
United States General Accounting Office
Washington, D. C. 20548

Dear Mr. Eschwege:

Please refer to your transmittal letter of a draft of your proposed report to the Congress entitled, "Amtrak Should Revise and Improve Its Passenger Service Contracts With Other Railroads" and telephone conversation with your office. The Chessie System welcomes the opportunity to comment on this report.

From our point of view we take only minor exceptions to the contents of the report. However, we do feel comments are necessary as to several aspects when considering the report in it broadest sense.

Readers of the report can develop an overall sense that GAO's interest is to reduce Amtrak's payments to the railroads. I am sure that your objective, instead, is to insure that the railroads are paid fairly for materials supplied and services rendered. Such being the case, little fault should be found with those incidents where the railroads were able to more accurately describe their expenses and Amtrak has agreed to pay accordingly. These are not offsets to defeat the objectives of the first and second amendment agreements as we understand them.

The report's description of the flat rate issue highlights the problems in this area. In the first place, the railroads and Amtrak have difficulties in agreeing on fair flat rates. After they have been set Amtrak and GAO watch closely to see if the actual expenses deviate from the flat rate. If actual expenses are less efforts are made to adjust to the lower level. This process is self-defeating as an incentive tool as is casually mentioned on page 12 of the report and also deprives Amtrak and the railroads of any accounting simplification that would otherwise be realized from the use of flat rates.

Chessie System views of the performance incentives may also require greater elaboration. We have viewed Amtrak's negotiations for incentives to carry a significant financial penalty compared with the present level of payment if the per-

Chessie System

formance objectives are not met. Chessie System currently gives the highest priority to operation of Amtrak trains. In spite of such special handling, performance is regularly at levels below that with which we or Amtrak are pleased. However, the reasons for delay are very diverse. Many of the delays are due to malfunctions of Amtrak equipment, the performance of Amtrak employees, the handling of U.S. mail, loading and unloading passengers, the picking up or setting off of extra cars or operating over foreign railroads. The examples are of such a nature that we have little or no direct control over the resulting performance. An incentive to us for improvement will show no results in such areas.

Other types of delays we encounter are related to slow orders or even an occasional derailment. Slow orders do not necessarily indicate a lack of maintenance but in many cases are the direct result of maintenance work being undertaken. We already have sufficient incentives to minimize such delays and a financial incentive from Amtrak would make little difference.

Therefore, if our present Amtrak performance is the result of factors such as described above, what motivation does Chessie have to enter into an agreement which will result in lower payments. In the absence of such an agreement we are still working to improve Amtrak's performance and with the help of Amtrak and the other railroads over which we operate performance will improve.

We hope these comments are of benefit to you and we look forward to reviewing your final report.

Very truly yours,

R. G. Rayburn
Vice President Transportation

[GAO Comment: The Chessie System comments are summarized on page 21, and the railroads' views about their being held accountable for delays over which they have no control are discussed on page 23.]

The Chessie System railroads are the C&O, B&O, WM and affiliated lines. Chessie System, Inc. is the parent for the railroads, Chessie Resources, Inc., Western Pocahontas Corp. and the Greenbrier.

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